September 19, 2001

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78783-3966

OR2001-4193

Dear Mr. Weir:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152147.

The City of San Antonio (the "city") received a request for a suicide letter addressed to the requestor's client. You claim that the requested letter is not public information for the purpose of the Public Information Act (the "Act") and therefore is not required to be released. The requestor has also submitted arguments to this office. *See* Gov't Code § 552.304. We have considered all of the submitted arguments and reviewed the submitted information.

You contend that the requested suicide letter was confiscated by city police. You further argue that the letter is "tangible property" owned by someone other than the city and that the city will return the letter to its owner once the issue of ownership is resolved. Consequently, you contend that the letter is not "information" for the purpose of the Act. This office has determined that the Public Information Act applies to "tangible items such as documents and other 'developed materials.'" Attorney General Opinion JM-640 at 2 (1987). On the other hand, tangible physical items that have the sole significance of being used as tools are not considered "information" and consequently are not subject to the Act. *See* Open Records Decision No. 581 at 5-6 (1990). Here, the requested item consists of a written document. Therefore, we believe it is "information" for the purpose of the Act. *See* Attorney General Opinion JM-640 at 2 (1987).

Furthermore, because the information at issue here was collected by the city's police department in connection with its official business, it is subject to disclosure upon request under the Act unless some exception to disclosure applies. *See* Gov't Code §§ 552.002, .006, .021. We note that the submitted letter contains information that would normally be protected under section 552.101 and common law and constitutional privacy. Gov't Code § 552.101; *see Indus. Found. v. Tex. Indus. Accident Bd.,* 540 S.W.2d 668, 685 (Tex. 1976),

cert. denied, 430 U.S. 931 (1977); Open Records Decision Nos. 470 at 6 (1987), 455 at 4 (1987). However, because the requestor represents the individual whose privacy rights are implicated in the information, the requestor has a right of access to the information. Gov't Code § 552.023. Consequently, you must release the submitted document to the requestor.[1]

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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[1]Nonetheless, because some of the information is confidential with respect to the general public, if the city receives a future request for this information from an individual other than the requestor's client or her authorized representative, the city should again seek our decision.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 152147

Enc: Submitted documents

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